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October 3, 2013

**VIA ECF**

The Honorable Brian M. Cogan  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Ralph Sams v. The City of New York, 13 CV 2368 (BMC)

Dear Judge Cogan:

I am the Special Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department representing the only named defendants, the City of New York and Detective Fawad Khan, in the captioned litigation. As Your Honor requested at the last conference, on September 26, 2013, I write to inform the Court that defendants can not obtain plaintiff's cooperation in discovery and more than 72 hours has elapsed. They regret having to write this letter, but since the Court appeared to be blame defendants for not moving plaintiff's case along (as well as for not informing Your Honor of plaintiff's dilatoriness sooner), they now feel compelled to do so.

Plaintiff filed his complaint on April 18, 2013, and filed an Amended Complaint on June 26, 2013. After requesting numerous extensions, plaintiff finally complied with his N. Y. Gen. Mun. L. § 50 obligation by sitting for his § 50(h) EBT on *August 28, 2013*. Plaintiff's counsel only provided that transcript to defendants on September 25, 2013 -- the day before the last Court conference. Immediately after the September 26<sup>th</sup> Conference, I sent plaintiff's counsel the attached email, Exhibit A p. 1, requesting that he confirm that plaintiff will (i) provide any errata sheets to the 50(h) within 72 hours, (ii) select one of the proposed dates for plaintiff's deposition, and (iii) provide the information the Federal Rules require with respect to the four individual plaintiff purported to notice in his "supplemental disclosure," *dated September 18, 2013*. See Exhibit A pp. 2-3 Plaintiff's counsel has refused to respond to my email, has refused to provide any errata sheets, has refused to provide the information the Federal Rules require regarding the individuals on his "supplemental disclosures," *and* it is now seven days before the first proposed date for plaintiff's deposition and plaintiff's counsel has still not confirmed

plaintiff's attendance, or returned my calls. Quite obviously, defendants can not take plaintiff's deposition or comply with Your Honor's Orders without plaintiff's counsel's cooperation.

Were it not for Your Honor's comments at the last conference, defendants might be inclined to give Mr. Hale more leeway. However, defendants can no longer afford to be held responsible for *plaintiff's* refusal to comply with his discovery obligations and Your Honor's Orders. Moreover Your Honor made it very clear that defendants should have informed the Court earlier that they could not obtain plaintiff's counsel's cooperation and that henceforth they should do so after 72 hours has elapsed. Thus this letter.

Defendants are quite sure Your Honor can think of an appropriate remedy and/or sanction for plaintiff's latest violation of Your Honor's Orders without any input from defendants.

Respectfully submitted,



Curt Beck

CPB/hs

Encl. Ex. A pp. 1-4

cc: Paul Hale, Esq. (by ECF)

## **EXHIBIT A**

**Beck, Curt (Law)**

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**From:** Beck, Curt (Law)  
**Sent:** Thursday, September 26, 2013 6:52 PM  
**To:** 'p h'  
**Subject:** Sams v. City

Dear Paul,

Pursuant to Judge Cogan's Order's please provide me with the information the Federal Rules requires with respect to the Supplemental Disclosures you sent to me on 9/18/13. More specifically, I need the telephone number for each of these individuals and the address at which each may be served with subpoenae. Please confirm, as was discussed in Court today that you will provide any errata sheets to plaintiff's August 28th 50(h) by October 4th so I can depose your client on October 10th or 11th as you prefer.

Unfortunately, pursuant to Judge Cogan's ruling today, I will need the requested information and as well as your confirmation as to the 50(h) "within 72 hours" of this email or I shall be forced to write or call the Judge and inform him of your refusal to comply with the Federal Rules, the prejudice those Rules violations are causing defendants, and request a remedy.

Best,

Curt

10/3/2013

**Beck, Curt (Law)**

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**Subject:** FW: KHAN deposition

**Attachments:** 3rd Disclosures.pdf

**From:** p h [mailto:paul@halelegallgroup.com]

**Sent:** Wednesday, September 18, 2013 12:26 PM

**To:** Beck, Curt (Law)

**Subject:** Re: KHAN deposition

Curt,

Please disregard the disclosures emailed earlier this morning. The corrected disclosures are attached. Hard copy originals are being mailed out today.

Paul Hale, Esq.  
26 Court Street  
Suite 913  
Brooklyn, NY 11242  
(718) 554-7344  
www.HaleLegalGroup.com

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This email and any attachments do not include any form of electronic signature or formal ratification of any agreement; which can only be confirmed by an actual, original signature independently executed by the sender of this email.

This message is intended only for the addressee. The information contained in this message is confidential, may be attorney-client privileged, and is intended only for the use of the addressee. Unauthorized forwarding, printing, copying, distributing, or using such information is strictly prohibited and may be unlawful. If you are not the addressee, please promptly delete this message and notify the sender of the delivery error by return e-mail or you may call our office at (718) 554-7344. Thank you.

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**From:** "Beck, Curt (Law)" <cbeck@law.nyc.gov>  
**To:** 'p h' <paul@halelegallgroup.com>  
**Sent:** Wednesday, September 18, 2013 10:30 AM  
**Subject:** RE: KHAN deposition

Dear Paul,

As promised earlier this morning, I have just reviewed the latest disclosures you served by mail today. Quite obviously, defendants will need to depose these individuals. Unfortunately, you have failed to provide defendants with the relevant information the Federal Rules require to get that done, i.e., information regarding the witnesses' contact information, addresses, the subject matter of their testimony, etc.. If you would like to rely upon these witnesses, please provide me with the required information, especially their contact information so defendants can properly prepare.

I thank you in advance for your professional cooperation.

Best,

Curt

10/3/2013

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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RALPH SAMS

Plaintiff(s),

CASE No.: 13-cv-2368

-against-

THE CITY OF NEW YORK,  
FAWAD KHAN,  
P.O. "JANE DOE" AND  
"JOHN DOE" 1-10.

PLAINTIFF'S  
SUPPLEMENTAL  
DISCLOSURES

1 'through' 10 inclusive,  
the names of the last defendants  
being fictitious, the true names  
of the defendants being unknown  
to the plaintiff(s).

Defendant(s).

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Plaintiff, via his attorney, hereby submits the following for initial disclosures pursuant to FRCP 26(a)(1)(A):<sup>1</sup>

Names of possible witnesses:<sup>2</sup>

1. Gabriel Berrios - knowledge of Def. Khan's prior acts of excessive force
2. James Jones 516-322-2918 128 Lewis Ave. Apt. 3D Brooklyn, NY 11221-  
knowledge of Def. Khan's prior acts of excessive force<sup>3</sup>
3. Ledell Walker - knowledge of Def. Khan's prior acts of excessive force
4. Rodrick Ingram - knowledge of Def. Khan's prior acts of excessive force

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<sup>1</sup> Please disregard supplemental disclosures dated 9/18/2013 that were emailed on 9/18/2013 to cbeck@law.nyc.gov


<sup>2</sup> Plaintiff is actively seeking contact information of the following: 1,3,4, 5

<sup>3</sup> Mr. James Jones is currently represented by counsel: Sivin and Miller, 20 Vesey St #1400, New York, NY 10007 (212) 349-0300

5. Sean Rose 118 Thompsons, 2nd Floor, Brooklyn, NY - knowledge of arrest and injury

6. Dr. Uzoma Ukomadu, Brooklyn Hospital Center 121 Dekalb Ave, Brooklyn, NY 11205 - surgeon and treating physician

Dated: 9/18/2013  
Brooklyn, New York

By:   
PAUL HALE ESQ.  
26 Court Street, Suite 913  
BROOKLYN NY, 11242  
PHONE: (718) 554-7344  
Attorney for Plaintiff(s)

TO:

Curt Beck  
Assistant Corporation Counsel  
Special Federal Litigation Division  
New York City Law Department  
100 Church Street  
New York, New York 10007